

### Summary of OR's draft multi-discharger variance for mercury

- **Scope:** All dischargers to the Willamette who have reasonable potential to cause or contribute to exceedances of the state's human health methylmercury criterion. [Note that OR currently has one of the most stringent human health criteria for methylmercury in the US].
- **Term:** 20 years for all eligible dischargers
- **Variance justification:** Factor 3 - Mercury is a human caused condition that cannot be remedied by the dischargers or the state, because even if in-state sources are controlled, overseas contributions will still result in the fishing use and associated methylmercury criterion being unattainable.
- **HAC selection and justification:** HAC3 for all facilities (munis and industrial facilities at all levels of performance). Separate justifications for facilities with advanced treatment (i.e., those employing nutrient removal, tertiary or other post-secondary treatment filtration; in these cases OR asserts that no additional treatment technology exists to remove additional mercury beyond current performance) vs. facilities without advanced treatment where OR asserts that technology upgrades would cause environmental harm and mercury minimization plans will lead to the same levels over time without the environmental damage.

### Points where we have group consensus

1. Oregon must identify all facilities (and associated waterbodies) in rule that might qualify for the variance. For transparency and clarity, Oregon should categorize separately the munis and industrials, and note which have advanced treatment and which do not.
2. The variance justification based on factor 3 is reasonable in this case.
3. Because this is a factor 3 variance based on "cannot be remedied" (not "cause more environmental damage to correct than to leave in place") and therefore the lens is not just what the discharger can remedy but also what the State can remedy, Oregon must commit to its own mercury minimization plan (i.e., PMP) that will include measures such as reducing erosion and runoff.
4. If this is a HAC3 variance, the PMPs must be identified up-front as part of the variance (not later when dischargers qualify for the variance).

### Outstanding issues and options to discuss as a group with Sara HM

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